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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,382	01/22/2002	Richard David Robinson JR.	40934.010600	6959

22191 7590 10/18/2004

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MCLEAN, VA 22102

EXAMINER

PALO, FRANCIS T

ART UNIT PAPER NUMBER

3644

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/051,382

Applicant(s)

ROBINSON ET AL.

Examiner

Francis T. Palo

Art Unit

3644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires            months from the mailing date of the final rejection. *See item 10 below*  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 19 May 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☐ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE:           .

3. ☐ Applicant's reply has overcome the following rejection(s):           .  
4. ☐ Newly proposed or amended claim(s)            would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed:           .Claim(s) objected to:           .Claim(s) rejected: 1-3, 5-8 and 27-34.Claim(s) withdrawn from consideration: 9-26 and 35-38.

8. ☐ The drawing correction filed on            is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).           .  
10. ☒ Other: See Continuation Sheet

  
**TERI P. LUU**  
SUPERVISORY PRIMARY EXAMINER

10/051,382

Continuation of 5. does NOT place the application in condition for allowance because: The Applicant's request for reconsideration is not convincing, and the amendment to independent claims 30 and 33 is grounds for further search and consideration (specifically, claim-30).

Continuation of 10. Other: Line-Item (a) under the Period of Reply should read; "The period for reply expires 2 months from the Notice of Appeal filed 5/19/04". As the shortened two-month statutory period has expired, the Applicant is required to submit and pay for an extension of time up to an additional 5-months, to file a Reply Brief, RCE or CIP, and the Applicant has until 12/19/04 to file a response with a 5-month extension of time, thereafter the Application will go abandoned. Regarding line-item 7: Both Hayes and Pearce disclose pesticide agent delivery via a pneumatic projectile launching device, and Pearce teaches the same motivation as the Applicant for varying the diameter of the paint ball; Hayes in view of Pearce is maintained, and MacDonald teaches aerial transport and delivery of chemical agents..

*Francis T. Palo*  
EXAMINER